

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LARRY RICE,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:06-CV-817 CEJ
)	
FRANK VAN STIPDONK, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on the motion of defendants Frank van Stipdonk, Vonk Dairy Products, B.V, and Interfood Holding, B.V., to dismiss for insufficient service of process under the Hague Convention, pursuant to Rule 12(b)(5), Fed. R. Civ. P. The defendants are citizens of the Netherlands. Plaintiff first attempted to serve these defendants by registered or certified mail sent by the Circuit Court of Franklin County, Missouri, prior to the removal of this action to this Court. Following removal, the defendants moved to dismiss this action for insufficiency of service under the Hague Convention.¹ The Clerk of Court subsequently issued to plaintiff summonses that would comply with the Hague Convention. However, plaintiff has not filed proof of service to date.

¹ The defendants subsequently filed an answer which did not reiterate the objection of insufficient service of process. The filing of the motion to dismiss for insufficient service of process preserved this objection, and defendants were not required to re-state the objection in the answer. See McCurdy v. American Board of Plastic Surgery, 157 F.3d 191, 194 (3d Cir. 1998).


Additionally, the record does not reflect service of process upon or entry of appearance on behalf of the remaining defendants, Tepco, Lactoformulas S.A. de C.V., Interfood Ingredients, Interfood Australia, and Interfood Latin America. Plaintiff alleges that these defendants are foreign entities with principal places of business in countries other than the United States.

Under the Hague Convention, to which the United States and the Netherlands are signatories, service by registered mail on a foreign defendant is insufficient. Bankston v. Toyota Motor Corp., 889 F.2d 172, 174 (8th Cir. 1989). Consequently, plaintiff's attempt to serve the defendants in this manner was ineffective.

On February 9, 2007, the Court issued an order directing plaintiff to file proof of service on the defendants. Plaintiff was advised that this action may be dismissed as to any defendant for whom proof of service was not filed. The deadline for plaintiff's response has passed, and he has not filed proof of service on the defendants. Accordingly,

IT IS HEREBY ORDERED that the motion of defendants Frank van Stipdonk, Vonk Dairy Products, B.V, and Interfood Holding, B.V. to dismiss is **granted**.

IT IS FURTHER ORDERED that all other pending motions in this action are **denied as moot**.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 9th day of March, 2007.

